

In the Matter of Merchant Mariner's Document No. Z-794962
Issued to: WILLIE KEMP

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

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WILLIE KEMP

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations Sec. 137.11-1.

On 8 February, 1952, an Examiner of the United States Coast Guard at Seattle, Washington, revoked Merchant Mariner's Document No. Z-794962 issued to Willie Kemp upon finding him guilty of misconduct based upon a specification alleging in substance that while serving as a waiter on board the American MSTs GENERAL E. T. COLLINS under authority of the document above described, on or about 18 March, 1951, while said vessel was in the port of Yokohama, Japan, he wrongfully had in his possession narcotics; to wit, diacetylmorphine hydrochloride (heroin).

At the hearing, Appellant was given a full explanation of the nature of the proceedings, the rights to which he was entitled and the possible results of the hearing. Appellant was represented by an attorney of his own selection and he entered a plea of "not guilty" to the charge and specification proffered against him.

Thereupon, the Investigating Officer made his opening statement and offered in evidence an authenticated copy of the record of proceedings against Appellant before a General Provost Court at Yokohama, Japan, on the charge of wrongful possession of heroin on or about 18 March, 1951. Over numerous objections by counsel, this document was received in evidence by the Examiner after Appellant had testified under oath on his own behalf. The Examiner stated that in determining the weight to be given to the court record, the testimony of Appellant would be taken into consideration.

Appellant testified that the heroin came into his possession when he was at a night club and paid for a beer and a bottle of wine with a twenty dollar bill. He stated that he was given four folded packages of Japanese yens as change and that the thin packet of heroin was found inside one of the packages of money when he was searched. Appellant further stated that he was told possession alone was sufficient to convict him before the Provost Court and, for that reason, he entered a plea of "guilty" even though he had no prior knowledge of the heroin being in his possession; and after pleading "guilty," he did not think it made much difference as to what was contained in a stipulation which he signed before it was entered in evidence before the Provost Court.

At the conclusion of the hearing, having heard the arguments of the Investigating Officer and Appellant's counsel and given both parties an opportunity to submit proposed findings and conclusions, the Examiner announced his findings and concluded that the charge had been proved by proof of the specification. He then entered the order revoking Appellant's Merchant Mariner's Document No. Z-794962 and all other licenses, certificates of service and documents issued to this Appellant by the United States Coast Guard or its predecessor authority.

From that order, this appeal has been taken, and it is urged that the order of the Examiner was too severe; that the order should be changed to nothing more serious than a suspension of Appellant's document; and that Appellant has no criminal record nor is he a user or addict of narcotics of any kind.

APPEARANCES: Everett E. Power, Esquire, of Oakland, California, of Counsel.

Based upon my examination of the record submitted, I hereby make the following

FINDINGS OF FACT

On 18 March, 1951, Appellant was acting as a waiter in the service of the American MSTs GENERAL E. T. COLLINS and acting under authority of his Merchant Mariner's Document No. Z-794962 while the ship was at Yokohama, Japan.

At about 2245 on this date, Appellant left a night club in Yokohama and started back to his ship. When he was passing through the first of the three U. S. Army check points at approximately 2315, he was searched by the Military Police on guard duty and a small paper packet of white powder was found in the watch pocket of Appellant's trousers. Subsequent chemical analysis by the Chief Chemist of the Criminal Investigation Laboratory of the Far East Command at Tokyo, Honshu, Japan, disclosed that the white powder was .09 grams of a narcotic which is commonly known as heroin.

On 3 April, 1951, at Yokohama, Appellant was arraigned and tried for this offense before a General Provost Court appointed by the Commanding General of the Yokohama Command of the Allied Powers. Appellant was charged with wrongful possession of heroin on 18 March, 1951. He was represented by counsel appointed by the Court and entered a plea of "guilty." It was then stipulated that if certain specified witnesses appeared, they would testify substantially as above stated in these findings of fact with respect to Appellant's apprehension with heroin located in the watch pocket of his trousers. This stipulation was in writing and signed by Appellant as well as by defense counsel and the prosecutor. Before the stipulation was accepted in evidence by the Court, Appellant had replied in the affirmative when asked if he had read and understood the stipulation; and he had replied in the negative when asked if he had any objection to it becoming part of the court record. After this, Appellant was specifically informed that he could testify under oath, remain silent, or submit an unsworn statement in which he could deny, explain, or excuse any of the acts charged against him. Appellant stated that he wished to remain silent. He was then found guilty of the offense as charged and sentenced to six months confinement at hard labor at the U. S.

Army Stockade in Tokyo. Appellant served four months of the sentence and two months of the sentence was remitted for good behavior.

There is no record of any prior disciplinary action having been taken against Appellant since he began going to sea in 1946. He is twenty-two years of age and single.

The Examiner observed Appellant and heard his story but was not convinced by it, largely because Appellant did not satisfactorily explain the discrepancy between his version of where the heroin was found and the contrary account which was contained in the stipulation before the General Provost Court. Appellant was given every opportunity by the Court to reject or contradict all or any part of the stipulation; but he failed to do so. Consequently, there is no justifiable reason for rejecting the conclusions and order of the Examiner who was in the best position to judge Appellant's credibility.

In addition to the other improbable aspects of Appellant's story, it is noted that he would have found the packet of heroin if he had followed the common practice of counting the change given to him for the twenty dollar bill; and it is extremely unusual for anyone to give away narcotics. Since all the credible evidence indicates that Appellant had knowledge that he possessed the packet of heroin, the possession was wrongful and the strict policy of the Coast Guard to revoke documents of seamen who have been found guilty of narcotics offenses, will be followed.

ORDER

The order of the Examiner dated at Seattle, Washington, on 8 February, 1952, is **AFFIRMED**.

Merlin O'Neill
Vice Admiral, United States Coast Guard
Commandant

Dated at Washington, D. C., this 23rd day of April, 1953.